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NONDISCRIMINATION ON THE BASIS OF DISABILITY

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Background

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in federally assisted programs and activities, was amended in 1978 to extend its application to programs and activities conducted by Federal Executive agencies, including this Department. The Department's regulation implementing section 504 with respect to its own federally conducted programs and activities is codified at 28 C.F.R. pt. 39. This Department is responsible, under Executive Order 12250, for coordinating implementation of section 504 with respect to both federally assisted and federally conducted programs and activities. Because of this Department's responsibility as lead agency for implementation and enforcement of section 504, it is important that the Department's own programs and activities be a model of compliance.

1-11.200 Definition

The regulation prohibits discrimination against qualified individuals with disabilities. An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

1-11.300 Department Responsibilities

The Department is required to take appropriate steps to ensure that qualified individuals with disabilities are able to participate in and benefit from all programs and activities conducted by the Department. For example, such steps would include the following:

A. Ensuring *effective communication* with applicants, program participants, personnel of other Federal entities and members of the public.

1. **Sign Language Interpreters.** When necessary to ensure effective communication, the Department will provide sign language interpreters free of charge to applicants and participants in programs and activities of the Department of Justice, including, for example, parties or witnesses in litigation initiated by the United States (28 U.S.C. § 1827), members of the public who are meeting with Department officials, individuals involved in proceedings of the Immigration and Naturalization Service, Federal prison inmates, and Federal personnel receiving training conducted by the Department. *See* 28 C.F.R. § 39.160.

2. Effective Telephone Communications. The Department will provide for effective telephone communication with people who have speech or hearing impairments through use of telecommunications devices for deaf persons (TDD's) or other equally effective communications systems. *See* 28 C.F.R. § 39.160(a)(2). In addition to the TDD numbers listed in the "Services Section" of the Justice Department telephone directory, the U.S. Marshals Service has a nationwide toll-free TDD number: 1-800-423-0719. If a TDD user wishes to communicate with a Department office by telephone, that office is responsible for arranging to use one of the Department's TDD numbers for that purpose. Department employees may also communicate with people with hearing or speech impairments by using the telecommunications relay services operated by telephone companies nationwide.

3. Accessible format versions of printed or audio-visual materials. The Department must provide material to people with hearing or vision impairments in accessible formats if that material is ordinarily made available to other individuals in print or in an audio-visual format. Examples of formats that are accessible to people who are blind or visually impaired include Brailled or audiotaped versions of printed matter and visually-described versions of video-taped or filmed material. Examples of formats that are accessible to people who are deaf or hard of hearing include captioned video tapes (with either open or closed captions) and printed scripts of audio presentations.

B. Ensuring *program accessibility* for people with disabilities if a Department program or activity is conducted in a facility that is not fully accessible.

The Department will ensure that its programs and activities are physically accessible to people with disabilities, including persons with mobility impairments. *See* 28 C.F.R. §§ 39.149-.151. For example, if a person who uses a wheelchair wishes to meet with personnel from a Department office, and the office is located in a building that is not accessible to persons who use wheelchairs, that office is responsible for arranging to hold the meeting at an alternative accessible site or for removing the physical barriers to access. Responsibility for ensuring program accessibility lies with the Department component that operates the program, even if the facilities in which the program is conducted are managed by the General Services Administration.

C. Ensuring *equal employment opportunity* for people with disabilities.

The Department must ensure nondiscrimination in its employment practices in accordance with the standards established under title I of the Americans with Disabilities Act by the Equal Employment Opportunity Commission. *See* 29 U.S.C. 791(g), 794(d); 29 C.F.R. pt. 1630. For example, the Department must use nondiscriminatory testing and selection criteria, make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, and restrict pre-employment medical examinations and inquiries regarding disability. The Rehabilitation Act also requires Executive agencies, including the Department, to take affirmative action to promote the hiring, placement, and advancement of people with disabilities. *See* 29 U.S.C. 791(b).

1-11.400 Consistency in Litigation

The Department must also be consistent in its approach to both affirmative and defensive litigation under Federal Disability Rights statutes. In order to ensure consistency, attorneys defending Federal agencies against Rehabilitation Act employment claims must consult title I of the ADA and the EEOC title I regulations. *See* 29 U.S.C. 791(g), 794(d); 29 C.F.R. pt. 1630. When nonemployment claims are asserted against a Federal agency under the Rehabilitation Act, attorneys should consult the agency's section 504 regulation for federally conducted programs. These title I and section 504 regulations provide important guidance on the positions the Government may assert as a defendant and may even suggest that a defense may not be permissible and that settlement should be entertained. They should always be considered when determining the scope of the Government's defensive posture.

Further information about the responsibilities of Departmental operating units under Section 504 may be obtained from the Disability Rights Section of the Civil Rights Division at (FTS) 307-0663 (voice or TDD).